

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

TASHAWN R. WILSON,)	
Petitioner,)	
)	
-vs-)	Case No. CIV-18-383-W
)	
JOE ALLBAUGH, DIRECTOR,)	
Respondent.)	

**PETITIONER’S MOTION FOR LEAVE TO FILE AN
AMENDED PETITION PURSUANT TO FED. R. CIV. P. 15**

COMES NOW, the Petitioner by and through counsel, Debra K. Hampton, and hereby submits this Motion as set forth above, and in support thereof, Petitioner states the following:

ARGUMENT AND AUTHORITY

The Petitioner hereby seeks leave to file an Amended Petition for Habeas Relief pursuant to Fed. R. Civ. P. 15 (a)(2) which provides for amendments; In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The Court should freely give leave when justice so requires.” Petitioner also asserts that under Fed. R. Civ. P. 15 (c)(1)(B) would allow for an amendment on Relation Back of Amendments, that provides: (B) *the amendment asserts a claim* or defense that arose out of the conduct, transaction, or occurrence set out—or *attempted to be set out*—in the *original pleading*.

The Magistrate issued a Report and Recommendation [Dkt. # 14] finding that the Petition is not time barred *Id.* at 2. Further finding that “Petitioner’s only *habeas* claim is

that the OCCA unreasonably found that the claims raised in his fourth application for post-conviction relief were procedurally barred.” Petitioner argues that this can be cured by an amendment where the Petitioner attempted to set forth the following:

THE OKLAHOMA COURT OF CRIMINAL APPEALS MADE AN UNREASONABLE DETERMINATION OF *BOYKIN v. ALABAMA*, 395 U.S. 238, 243 n. 5, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); *SANTOBELLO v. NEW YORK*, 404 U.S. 257, 262, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971); AND *PUCKETT v. UNITED STATES*, 556 U.S. 129, 129 S.Ct. 1423, 173 L.Ed.2d 266 (2009) WHERE THE PETITIONER IS BEING HELD IN VIOLATION OF THE UNITED STATES CONSTITUTION

Petitioner reasserts that he is being held unlawfully in violation of the due process clause and that justice would require leave to amend and when justice so requires leave should be freely given. *Minter v. Prime Equip. Co.*, 451 F.3d 1196, 1205 n. 4 (10th Cir. 2006). In this case the amendment is made in the interest of justice and will not cause undue prejudice to the Respondent nor is amending the Petition futile. See *Foman v. Davis*, 371 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962). The Amended Petition is attached hereto as [Exhibit 1].

CONCLUSION

WHEREFORE, Petitioner respectfully moves this Court to grant his Motion for Leave to File an Amended Petition where justice so requires.

IT IS SO PRAYED.

Respectfully Submitted,

/s/ DEBRA K. HAMPTON

DEBRA K. HAMPTON, OBA # 13621

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August 2018, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrant:

Office of the Attorney General

e-mail: fhc.docket@oag.state.ok.us

I hereby certify that on this 7th day of August 2018, I served the attached document by mailing to the Petitioner as he is not registered participants of the ECF System:

Tashawn R. Wilson # 576319

CCF

3200 SW Kings Highway

Cushing, OK 74023

/s/ DEBRA K. HAMPTON

DEBRA K. HAMPTON